

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
Ultimate Abstract Services Inc.,
Ultimate Abstract Services, Inc. Pension Plan, and
Edward Regan

Plaintiffs,

- against -

Hartford Fire Insurance Company

Defendant.
-----X

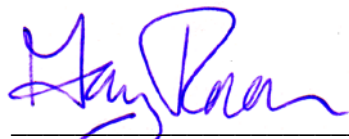
Index No.: 203056 /2022

Date Filed: October 14, 2022
Plaintiffs designate
Suffolk County as the
Place of Trial

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer or if the Complaint is not served with this Summons, to serve a notice of appearance, upon the Plaintiff's attorney within twenty (20) days after service of this Summons, exclusive of the date of service (or within thirty [30] days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for relief demanded in the complaint.

Dated: October 14, 2022
Great Neck, New York



GARY ROSEN, ESQ.
ROSEN LAW LLC
Attorneys for Plaintiffs
Ultimate Abstract Services Inc. and
Edward Regan
216 Lakeville Road
Great Neck, New York 11020
Tel.: (516) 437-3400

DEFENDANT'S ADDRESSES:

Hartford Fire Insurance Company

One Hartford Plaza

Hartford, Connecticut 06155

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
Ultimate Abstract Services Inc.,
Ultimate Abstract Services, Inc. Pension Plan, and
Edward Regan

INDEX NO.: 203056/2022

COMPLAINT

Plaintiffs,

- against -

Hartford Fire Insurance Company

Defendant.
-----X

Plaintiffs, complaining of the Defendant by their attorneys, ROSEN LAW LLC,
respectfully alleges as follows:

1. At all times hereinafter mentioned and at the time of the commencement of this action, Plaintiff Ultimate Abstract Services Inc. was and is a domestic corporation organized in the State of New York, and authorized to conduct business in the State of New York, with its principal place of business located at 1383 Veterans Memorial Highway, Suite 30, Hauppauge, New York 11788.

2. At all times hereinafter mentioned and at the time of the commencement of this action, Plaintiff Ultimate Abstract Services Inc. Pension Plan was and is a pension plan duly formed in the State of New York, and authorized to conduct business in the State of New York, with its principal place of business located at 1383 Veterans Memorial Highway, Suite 30, Hauppauge, New York 11788.

3. At all times hereinafter mentioned and at the time of the commencement of this action, Plaintiff Edward Regan was and is an individual with his principal place of

business located at 1383 Veterans Memorial Highway, Suite 30, Hauppauge, New York 11788.

4. At all times hereinafter mentioned and at the time of the commencement of this action, Plaintiff Edward Regan was a beneficiary of the Ultimate Abstract Services, Inc. Pension Plan (“Pension Plan”).

5. Defendant issued a fidelity bond, policy number / bond number CrimeShield Policy No. 16BDDAL9288 to Plaintiff Ultimate Abstract Services Inc. and Plaintiff Ultimate Abstract Services, Inc. Pension Plan (the “Bond”).

6. Non-party Bruce A. Payne was and is the trustee of the Pension Plan.

7. Non-party Bruce A. Payne was and is an employee of the Pension Plan.

8. Non-party Bruce A. Payne (the “Pension Plan Trustee”) stole the funds that belonged to the beneficiaries of the Pension Plan, including Plaintiff Edward Regan.

9. Pension Plan Trustee committed theft of the Pension Plan assets.

10. On July 28, 2022, Plaintiff Edward Regan obtained a judgment against the Pension Plan Trustee (**Exhibit “1”**).

11. Plaintiffs had only discovered that the assets of the Pension Plan were unable to be located after Plaintiff Edward Regan obtained a judgment against the Pension Plan Trustee.

12. To date, the Pension Plan Trustee failed to return the funds that Pension Plan Trustee took from the Pension Plan’s bank accounts and/or brokerage accounts, depriving Plaintiffs of the monies that were due to be held by the Pension Plan and due to be paid to the beneficiaries of the Pension Plan, including Plaintiff Edward Regan.

13. Plaintiffs demand that Defendant make the Pension Plan whole due to the malfeasance of the Pension Plan Trustee.

14. Upon information and belief, the total assets of the Pension Plan that the Pension Plan Trustee withdrew from the Pension Plan's bank accounts and/or brokerage accounts, exceeded \$750,000.

15. The Pension Plan Trustee committed fraud resulting in losses to the Plaintiffs and beneficiaries of the Pension Plan exceeding \$750,000.

16. The Pension Plan Trustee committed dishonesty resulting in losses to the Plaintiffs and beneficiaries of the Pension Plan exceeding \$750,000.

17. The Bond was a contract between Plaintiff Ultimate Abstract Services Inc., Plaintiff Ultimate Abstract Services, Inc. Pension Plan and Defendant.

18. Plaintiff Edward Regan is a third-party beneficiary pursuant to the contract between Plaintiff Ultimate Abstract Services Inc., Plaintiff Ultimate Abstract Services, Inc. Pension Plan and Defendant.

19. Plaintiffs performed all of their obligations under the Bond.

20. Plaintiffs made a demand upon Defendant to pay to Plaintiffs the sum exceeding \$750,000 as the losses sustained by Plaintiffs due to the malfeasance of the Pension Plan Trustee.

21. Defendant established claim number 564FD64798 with regard to Plaintiffs' claims set forth in this complaint.

22. Defendant breached their obligations under the Bond by failing to pay the sum exceeding \$750,000 being the losses sustained by Plaintiffs due to the malfeasance of the Pension Plan Trustee.

23. Plaintiffs sustained damages.
24. Plaintiffs sustained injuries as a result of the Defendant failing to pay the sum exceeding \$750,000 being the losses sustained by Plaintiffs due to the malfeasance of the Pension Plan Trustee.
25. Plaintiffs demand judgment against Defendant.
26. Defendant has refused to perform its obligations under the terms and conditions of the Bond.
27. Plaintiffs have been damaged as a result of Defendant's failure to perform the terms and conditions of the Bond.
28. By reason of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial, but anticipated to be no less than \$750,000, plus interest, costs, disbursements and attorneys' fees.

AS AND FOR A SECOND CAUSE OF ACTION
FOR UNJUST ENRICHMENT

29. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "28" of this complaint, with the same force and effect as if more fully set forth at length herein.
30. Defendant received insurance premiums for the Bond from Plaintiff Ultimate Abstract Services Inc. and/or Plaintiff Ultimate Abstract Services, Inc. Pension Plan.
31. Defendant benefitted at the Plaintiff's expense.
32. Equity and good conscience require restitution to Plaintiffs.

33. By reason of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial, but anticipated to be no less than \$750,000, plus interest, costs, disbursements and attorneys' fees.

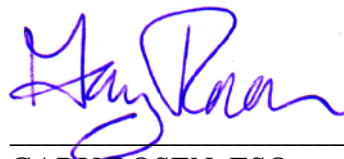
WHEREFORE, Plaintiffs demands judgment:

a) On the First Cause of Action against Defendant in the sum to be determined at trial, but anticipated to be no less than \$750,000, plus attorneys' fees, costs, expenses and disbursements;

b) On the Second Cause of Action against Defendant in the sum to be determined at trial, but anticipated to be no less than \$750,000, plus attorneys' fees, costs, expenses and disbursements;

c) And for such other and further relief as to the Court may seem just, proper together with attorneys' fees, the costs and disbursements of this action.

Dated: October 14, 2022
Great Neck, New York



GARY ROSEN, ESQ.
ROSEN LAW LLC
Attorneys for Plaintiffs
Ultimate Abstract Services Inc. and
Edward Regan
216 Lakeville Road
Great Neck, New York 11020
Tel.: (516) 437-3400

[illegible]

Dated: October 14, 2022
Great Neck, New York



GARY S. ROSEN

Exhibit “1”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EDWARD REGAN,

Plaintiff,

- against -

DEFAULT JUDGMENT
CV 20-5423 (JMA) (ARL)

BRUCE A. PAYNE, individually and as Trustee and
Fiduciary of the ULTIMATE ABSTRACT
SERVICES, INC. PENSION PLAN, and THE
ULTIMATE ABSTRACT SERVICES INC.
PENSION PLAN,

Defendants.
-----X

An Order of Honorable Joan M. Azrack, United States District Judge, having been filed on July 28, 2022; granting Plaintiff's motion for a default judgment, directing the Clerk of the Court to enter judgment against Defendant Bruce A. Payne and in favor of Plaintiff Edward Regan in the amount of \$350,034.20, plus prejudgment interest of \$184,831.04, for a total of \$534,865.24, and directing the Clerk of the Court to close this case, it is

ORDERED AND ADJUDGED that Plaintiff's motion for a default judgment is granted; that Plaintiff Edward Regan is awarded a default judgment in the amount of \$534,865.24 against Defendant Bruce A. Payne; and that this case is closed.

Dated: July 28, 2022
Central Islip, New York

BRENNA B. MAHONEY
CLERK OF THE COURT

BY: /S/ JAMES J. TORITTO
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EDWARD REGAN,

For Online Publication Only

Plaintiff,

ORDER

2:20-CV-05423 (JMA) (ARL)

-against-

**FILED
CLERK**

7/28/2022 11:50 am

BRUCE A. PAYNE, individually and as Trustee
and Fiduciary of the ULTIMATE ABSTRACT
SERVICES, INC. PENSION PLAN, and
THE ULTIMATE ABSTRACT
SERVICES, INC. PENSION PLAN,

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Defendants.

-----X
AZRACK, United States District Judge:

Before the Court is the motion of Plaintiff Edward Regan for a default judgment against Defendant Bruce A. Payne. Plaintiff alleges that Payne, as trustee and fiduciary of the Ultimate Abstract Services, Inc. Pension Plan (the “Plan”), violated provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq., by breaching his fiduciary duties to the Plan. (See Compl., ECF No. 1.) Plaintiff now seeks \$350,034.20, representing Plaintiff’s share of the Plan’s assets as of February 28, 2017; interest in the amount of \$184,831.04, calculated at a rate of 9% per year from February 28, 2017; and attorney’s fees and costs to be sought in a post-judgment application. (See Rosen Decl. ¶ 18, ECF No. 8-3.) For the following reasons, Plaintiff’s motion is GRANTED, and Plaintiff is awarded a default judgment against Defendant Payne.

I. DISCUSSION

A. Defendant Defaulted

The record reflects that Defendant was properly served in this action but has not answered, appeared in this action, responded to the instant motion for default judgment, or otherwise defended this action. Accordingly, the Court finds Defendant in default.

B. Liability

When a defendant defaults, the Court is required to accept all of the factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor. See Finkel v. Romanowicz, 577 F.3d 79, 84 (2d Cir. 2009). However, the Court also must determine whether the allegations in the complaint establish the defendant's liability as a matter of law. Id. Here, the allegations in the Complaint are sufficient to establish Defendant Payne's liability for breach of fiduciary duty under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

C. Relief

Plaintiff seeks, among other things, "appropriate equitable relief" against Defendant Payne, "including but not limited to surcharge[.]" (Compl. at 16.) Specifically, Plaintiff pursues recovery of \$350,034.20, representing Plaintiff's share of the Plan's assets as of February 28, 2017, as well as interest in the amount of \$184,831.04, apparently based on New York's statutory prejudgment interest rate of 9%. (See Rosen Decl. ¶ 18.) The Court finds that surcharge is warranted due to Defendant Payne's breach of fiduciary duties as a fiduciary of the Plan. See CIGNA Corp. v. Amara, 563 U.S. 421, 441 (2011) (holding that surcharge is available as a form of equitable relief under 29 U.S.C. § 1132(a)(3)); see also Hartman v. Lincoln Nat'l Life Ins. Co., No. 4:20-CV-579, 2022 WL 103313, at *2 (E.D. Mo. Jan. 11, 2022) (ordering surcharge under § 1132(a)(3) against defaulting defendant for breach of fiduciary duty). Defendant Payne is therefore liable to Plaintiff for \$350,034.20, which represents the precise amount of "monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." Amara, 563 U.S. at 441. Additionally, the Court awards prejudgment interest in the amount of \$184,831.04, based on New York's statutory rate of 9%. See Alfano v. CIGNA Life Ins. Co. of New York, No. 07-CV-9661, 2009 WL 890626, at *7 (S.D.N.Y. Apr. 2, 2009) (awarding prejudgment interest to ERISA plaintiff at statutory rate of 9%).

II. CONCLUSION

For the reasons stated above, Plaintiff's motion for a default judgment is GRANTED. The Clerk of the Court is respectfully directed to enter judgment against Defendant Bruce A. Payne and in favor of Plaintiff Edward Regan in the amount of \$350,034.20, plus prejudgment interest of \$184,831.04, for a total of \$534,865.24.

The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: July 28, 2022
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE